

Court No. - 69

Case :- CRIMINAL REVISION No. - 837 of 2016

Revisionist :- Ram Autar

Opposite Party :- State of U.P.

Counsel for Revisionist :- Arun Kumar Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Arun Kumar Tripathi, learned counsel for the revisionist, Sri Ram Prakash Shukla, learned A.G.A. for the State and perused the material on record.
3. The trial court records have been received which have also been perused.
4. The present revision under Sections 397/401 Cr.P.C. has been preferred by the revisionist- Ram Autar against the judgement and order dated 25.2.2016, passed by the Additional District and Session Judge, Court No. 1, Farrukhabad in Criminal Appeal No. 30/2010 (Ram Autar Vs. State of U.P.), whereby the judgement and order dated 17.3.2010, passed by the Additional Chief Judicial Magistrate, Farrukhabad in Case No. 672 of 2006 (State Vs. Sunder Lal) under Section 7/16 of Prevention of Food Adulteration Act, P.S.- Kotwali Farrukhabad, District- Farrukhabad, whereby revisionist has been convicted with one year rigorous imprisonment and fine of Rs. 1,000/-, under Section 16(1)(a)(1) of Prevention of Food Adulteration Act, P.S.- Kotwali Farrukhabad, District- Farrukhabad.
5. The facts of the case are that the complainant R.S. Rajpoot,

Food Inspector stopped the revisionist on 01.07.1999 at about 11:00 a.m. at Fatehgarh Road near Bus Station, Farrukhabad, P.S.-Farrukhabad, Farrukhabad while he was carrying 20Kg goat milk in one containers which was intended for sale. On suspicion of it being adulterated, he disclosed his identity to the accused and asked license for sale to which he denied. The complainant purchased 750ml milk for sample and then kept in three bottles in equal quantity in which 20 drops of formalin each was added for preserving it which was then sent to the public analyst for chemical analysis who vide his report being report no. VA-1441 dated 13.8.1999 reported it to be adulterated as it contained 54 per cent less milk fat and 6 percent less milk solid non-fat in it. The complainant then took sanction from the C.M.O. concerned and filed a complaint against the revisionist/accused. In the trial court the complainant R.S. Rajpoot, Food Inspector, was examined as P.W.-1 and Sarvesh, Khadya Lipik, was examined as P.W.-2. The accused/revisionist in his statement under Section 313 Cr.P.C. denied the prosecution case and stated of false implication. The trial court convicted and sentenced the accused/revisionist as stated above. The appeal was preferred against the same which came to be dismissed after which the present revision has been filed against both the impugned judgement and orders.

6. Learned counsel for the revisionist argued that the notice under Section 13(2) of the Prevention of Food Adulteration Act, 1954 although is stated to have been sent by Sarvesh Kumar, P.W. 2 but there is nothing on record to show that the same has been received by the accused revisionist. It is argued that merely be stating of sending a report would not be a compliance of Section 13(2) of the Act of 1954. In the present case, there has been no evidence on record by the prosecution to conclusively show that that said

notice under Section 13(2) of the Act of 1954 has been served upon the accused-revisionist. It is argued that even the trial court has not returned any finding with regard to the service of said notice on the revisionist. It is argued that at the stage of appeal, the appellate court, while dealing with the said submissions has also observed that no acknowledgement was stated to be sent with the said notice and as such it cannot be said whether the said notice has been received by the accused or not. It is argued that the appellate court, thus, fell in error in not extending the benefit of the same to the accused-revisionist. It is argued that in such a matter, considering the judgment of the Apex Court in the Case of **Vijendra Vs. State of Uttar Pradesh: (2020) 15 SCC 763 (para-14 and 15)** and **Narayan Prasad Sahu Vs. The State of Madhya Pradesh: (2022) 1 SCC 87 (para-5, 6, 8 and 9)**, the trial court should have addressed issue regarding the factum of service of notice upon the accused. It is argued that since the same is not addressed by the trial court and further the appellate court also observes that there is nothing on record to show whether any such notice has been received by the accused-revisionist or not. The present case is a case where benefit of doubt should be extended to the revisionist and the judgments and orders should be set aside, since the prosecution is fault.

7. After having heard, learned counsel for the parties and perusing the records, it is evident that in so far as the factum of service of notice under Section 13(2) of the Act of 1954 is concerned, there is nothing on record to show that the said notice has been served upon the revisionist. The judgment and order of the trial court is silent with regard to the said aspect. The appellate court addresses the same and states that there is nothing on record to show whether the said notice has been received by the accused or not but has not

extended any benefit to the same. This Court, thus, after considering the matter, comes to the conclusion that since there is nothing on record to show for any notice under Section 13(2) of the Prevention of Food Adulteration Act, 1954 has been received by the revisionist is of the opinion that the prosecution is bound to fall down. The revision, thus, is allowed. The conviction and sentence of the revisionist and the judgment and order of the appellate court are set aside.

8. Office is directed to transmit the copy of this judgement along with the trial court records to the concerned trial court forthwith for its compliance and necessary action.

9. The file be consigned to records.

Order Date :- 12.12.2023

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(Samit Gopal, J.)